IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

MONDAY, THE 11TH JUNE 2007 / 21ST JYAISHTA 1929

WP(C).No. 29487 of 2005(I)

AGAINST THE ORDER DATED IN IA 322/2005 IN
OS.282/2000 of MUNSIFF COURT, THALIPARAMBA

.....

PETITIONER:

UMMATHIRIYAN PANCHALI, D/O. KUPPA,
MUTHUKUDA, PATTUVAM AMSOM, ARIYIL DESOM,
P.O. PATTUVAM, DT. KANNUR.

BY ADV. SRI.E.V.NAYANAR
SMT.VIDHYA. A.C

RESPONDENTS:

MADATHIL AMINA UMMA, D/O. PATHUMMA,
MUTHUKUDA, PATTUVAM AMSOM, ARIYIL DESOM,
P.O. PATTUVAM, DIST. KANNUR.

BY ADV. SRI.B.PREMNATH (E)

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 11/06/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

WPC NO. 29487/2005

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF PLAINT IN O.S. NO.282/2000 OF MUNSIFF COURT TALIPARAMBA.

EXT.P2: COPY OF WRITTEN STATEMENT IN DO...DO.

EXT.P3: COPY OF the AFFIDAVIT OF THE DEFENDANT IN O.S. NO. 282 OF 2000 OF MUNSIFF COURT TALIPARAMBA.

EXT.P4: COPY OF REPORT DATED 17.1.2005 OF THE ADVOCATE COMMISSIONER IN .D.O..DO

EXT.P5: COPY OF PLAN DATED 17.1.2005 OF THE ADVOCATE COMMISSIONER IN DO DO

EXT.P6: COPY OF AFFIDAVIT OF THE DEFENDANT FILED IN SUPPORT OF I.A. NO. 322 OF 2005 IN O.S. NO. 282 OF MUNSIFF COURT TALIPARAMBA.

EXT.P7: COPY OF the PETITION IN I.A. NO. 322 OF DO.

EXT.P8: COPYOF THE COUNTER OF THE PLAINTIFF FILED IN DO DO.

EXT.P9: COPY OF ORDER DATED 19.7.2005 OF THE LEARNED MUNSIFF OF TALIPARAMBA IN I.A. NO. 322 OF 2005 IN O.S. NO. 282 OF 2000

PIUS C. KURIAKOSE, J.

W.P.(C) NO. 29487 of 2005

Dated this the 11 day of June , 2007

JUDGMENT

Ext.P9 order, by which the learned Munsiff dismissed the application filed by the defendant to remit the commission report and plan to the commissioner is under challenge by the defendant in these proceedings under Article 227. Having guaged Ext.P9 by the parameters to be adopted for the purpose of Article 227, I am of the view that there is no warrant at all for interfering with Ext.P9 in this court's visitorial jurisdiction. The learned Munsiff has given excellent reasons as to why the application is not liable to be allowed at that stage. In my opinion, the petitioner does not have to be aggrieved by Ext.P9 since the learned Munsiff himself has observed that , it is open to the petitioner to bring out any ambiguity in the plan by examining the Commissioner and by producing other satisfactory evidence.

2. The petitioner is given the liberty of cross examining the Commissioner on the basis of her objection that in the plan

existence of the petitioner's well is not noted. The petitioner can produce documentary evidence, if any, which will go to substantiate the other objections to the Commission report. The learned Munsiff, before taking up the final hearing of the case, will hear the parties on the question of acceptability of the commissioner's report and give his decision on that. If the decision comes to be in favour of the petitioner, the confirmation of Ext.P9 by this court will not stand in the way of the learned Munsiff passing appropriate further directions regarding the plan.

3. The challenge against Ext.P9 fails. However, it also made clear that if the result of the suit goes against the petitioner, the confirmation of Ext.P9 by this court will not stand in the way of the petitioner urging grounds raised in the writ petition also in the memorandum of appeal.

The writ petition will stand dismissed subject to directions and observations herein.

PIUS C. KURIAKOSE,

JUDGE.

dpk